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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/538,679	03/30/2000	Greg Linden	249768021US	8745

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EXAMINER

MCALLISTER, STEVEN B

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 09/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/538,679

Applicant(s)
Linden6

Examiner
Steven McAllister

Art Unit
3627



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Mar 30, 2000 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 6) ☐ Other:

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the displaying steps, the receiving step, the determining IDF step (all of cl. 1); the steps of claims 7-19; seller location information for the distinguished purchasing opportunity (cl. 25); availability information for the distinguished purchasing opportunity (cl. 26); publisher information (cl. 30); author identification (cl. 31); description information claimed in claims 32-36; the term score generator, keyword selection subsystem, purchasing opportunity identification subsystem (cl. 41); and the claimed elements of claims 54-55, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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3. Claims 2-10, 17-38, 42-55 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Statutory subject matter is required to be useful, concrete and tangible.

Claims 2-53 are not tangible because they are drawn to a method of merely manipulating data with no claimed output (either displaying the distinguished buying opportunity or displaying the output of the method).

Claims 54-55 are drawn to a data construct.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 recites “identifying as an auction offering an item that is the same as the first item”, but the claim method cannot identify that the item is the same as the one identified. Rather, it can only predict a similarity based on similar keywords.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "the auction" in line 18, but it is not clear to which auction it refers.

Claims 2, 37, and 41 recite "identifying purchasing opportunities of the set containing key words", but it is ambiguous whether this means at least one keyword or all key words. In examining the claim it was read as at least one.

Claim 41 is indefinite because the preamble recites the subcombination of a data processing system, but the body of the claim recites the combination of a data processing system and particular data output by the system, i.e., a purchasing opportunity score. In examining the claims, it was not clear whether the applicant intended to claim the combination or the subcombination. In examining the claims, it was assumed that the subcombination was claimed.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 1-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amazon.com in view of Ishikawa et al (5,848,407) and Sato et al (6,212,517).

Amazon shows displaying information about a first sale item including a description; receiving user input requesting user input for similar items; and displaying information about the identified similar items. Amazon.com does not show the specific search method. Sato et al show determining for the specified text, the IDF of terms occurring in the text and selecting a plurality of search terms having the largest IDFs and searching the selected keywords. It would have been obvious to one of ordinary skill in the art to modify the method of Amazon by performing the steps of Sato et al in order to provide a search tool which provides customer privacy and which provides a better measure of item similarity. Amazon.com further does not show determining which of the terms is in the found item's description and identifying a similar auction where the sum of the IDFs determine the similarity. Ishikawa et al show these steps. It would have been obvious to one of ordinary skill in the art to further modify the method of Amazon by determining similar documents by adding the IDFs for the terms in order to provide a simple and efficient means of determining similarity. Finally, Amazon does not show sales of items via auction. However, it is notoriously old and well known in the art to sell items via online auction. It would have been obvious to one of ordinary skill in the art to further modify the method of Amazon by auctioning items in order to get the highest price.

As to claims 2, 37, 42 and 48, Amazon shows a purchasing opportunity at a store displaying information about a first sale item including a description. Amazon.com does not

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show the specific search method. Sato et al show determining for the specified text, the IDF of terms occurring in the text and selecting a plurality of search terms having the largest IDFs. It would have been obvious to one of ordinary skill in the art to modify the method of Amazon by performing the steps of Sato et al in order to provide a search tool which provides customer privacy and which automatically generates a term-based search. Amazon.com further does not show performing the search or establishing a score based on summing the term scores of the key words. Ishikawa et al show these steps. It would have been obvious to one of ordinary skill in the art to further modify the method of Amazon by finding and scoring similar documents by adding the IDFs for the terms in order to provide a simple and efficient means of determining similarity

As to claim 7, it is noted that Amazon shows selecting the purchasing opportunities in response to a request from the user.

As to claims 8-10, it is noted that claimed subject matter is obvious over the claimed step of claim 7. Alternatively, if it were determined that the claims were patentably distinct over claim 7, a species requirement would be necessary.

As to claim 11, Amazon shows displaying information about the opportunity with the largest score in response to a user request.

As to claim 12, Amazon shows displaying information about the opportunity with the largest score in response to a user request along with the distinguished (original) purchasing opportunity.

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As to claims 13 and 39, all elements of shown except listing the purchasing opportunities in order of their scores. However, it is notoriously old and well known in the art to list search results in descending order of relevance or similarity. It would have been obvious to one of ordinary skill in the art to further modify the method Amazon by doing so in order to present the most likely purchase opportunities first.

As to claims 14, 15 and 40, it is noted that Amazon shows a subset comprising a fixed number of purchasing opportunities.

As to claim 16, it is noted that claimed subject matter is obvious over the claimed step of claim 15. Alternatively, if it were determined that the claims were patentably distinct over claim 15, a species requirement would be necessary.

As to claim 17, it is noted that Sato et al show selecting a fixed number of keywords.

As to claims 18 and 19, it is noted that claimed subject matter is obvious over the claimed step of claim 17. Alternatively, if it were determined that the claims were patentably distinct over claim 17, a species requirement would be necessary.

As to claims 20-24, 27, and 30-33, it is noted that Amazon shows these description elements.

Additionally, it is noted that it is old and well known in the art to include any of the elements of claims 20-36 as appropriate for the type of sale and kind of items being sold. It would have been obvious to one of ordinary skill in the art to modify the method of Amazon by including such information in order to facilitate ease of purchase.

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As to claim 41, it is noted that the method of claim 2 is inherently practiced by the system of claim 41.

As to claims 47 and 53, Amazon does not show sales of items via auction. However, it is notoriously old and well known in the art to sell items via online auction. It would have been obvious to one of ordinary skill in the art to further modify the method of Amazon by auctioning items in order to get the highest price.

As to claims 54-55, any apparatus practicing the method claim 2 inherently comprises computer memory containing the claimed data structure.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following documents have been found relevant due to their discussion or use of IDF and document ranking:

Herz et al (5,835,087), Wyard et al (6,167,398), Inaba et al (6,298,344)

Block et al (6,295,543), Kaufman (6,370,525), Turtle et al (5,488,725)


Spencer (5,915,249), Holt et al (5,761,497), Messerly et al (6,161,084),

Lamburt (6,421,683), Apte et al (GB 2365576)

Yahoo! Shopping shows finding similar products in an ecommerce environment.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052.


Steven B. McAllister

September 4, 2002